Azrell bin Mohamad v National Aerospace & Defence Industries Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO WA-16A-15–04 OF 2023
AMARJEET SINGH J
5 JUNE 2024

Labour Law — Nature of employment — Whether permanent employment dressed up as several fixed-term contracts — Employee on resigning from company was re-engaged to old position on yearly contracts for seven years — During seven years he was given promotion, salary increments and increasing annual leave — Whether nature of employment showed workman was employed on permanent basis and not on a genuine fixed-term contracts — Whether company's sudden decision to 'renew his contract' for only one month amounted to dismissal without just cause or excuse

In November 2003, the appellant commenced employment as finance manager with the respondent's largest shareholder before being transferred to the respondent in the same capacity. Five years after that transfer, the appellant resigned from employment. Two years later, he accepted the respondent's offer to work on a yearly contractual basis as general finance manager. The contract was extended annually for seven years from 2014 until 2020. In January 2021, the respondent informed the appellant that his services would be extended for only one more month and thereafter terminated. The appellant treated his termination as a dismissal without just cause or excuse and filed a complaint with the industrial relations department which referred the matter to the Industrial Court for adjudication. Contrary to the respondent's position that he was on a fixed-term contract, the appellant contended that he was actually a permanent employee of the respondent as his contract was renewed annually without any request on his part and he was given promotion, salary increments and increasing annual leave during those seven years. The Industrial Court ruled that the appellant's contract with the respondent was on a fixed-term contract basis and dismissed his claim. The appellant appealed against the award.

Held, allowing the appeal, setting aside the Industrial Court's award and remitting the case back to the Industrial Court for assessment of compensation:

(1) The Industrial Court had given a literal construction to the contract between the parties and found that the appellant had voluntarily accepted the terms therein for what they meant, especially the clause 'upon termination, should your service be further renewed or extended

on several occasions, at your own request, you are not deemed to be our permanent staff unless it is expressly stated in our letter of appointment'. The Industrial Court found that the contract that had expired ceased to have any effect and that there was no continuity of employment when the appellant entered into a new contract (see para 18).

(2) The Industrial Court failed to apply the law for determining whether or not a contract was a genuine fixed-term contract as propounded by the Federal Court in *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [2020] 5 MLJ 58. It was held in that case that three matters should be considered: (a) the intention of the parties; (b) the employer's subsequent conduct during the course of employment; and (c) the nature of the employer's business and the nature of work the employee was engaged to perform (see paras 21–22).

(3) The facts showed that the appellant was employed as general finance manager and then promoted to senior general finance manager. There was a permanent nature of the position in the finance department of the respondent. The company's intention was clearly to renew unfailingly the contract of employment without making the same permanent. It did so for seven years. This conduct of the respondent showed that the fixed-term contract was not out of genuine necessity but as a means of control and subjugation of the appellant (see para 23).

(4) The subsequent conduct, according to *Ahmad Zahri bin Mirza*, included the total duration or length of service with the respondent. Here, it was for seven years and doing the same work as general finance manager and then as senior general manager of finance. During this period, the appellant was treated like a permanent employee, receiving salary increments and an increase in annual leave and promotion. The appellant did not have to apply for each renewal but on each occasion he 'agree to accept the appointment' as senior general manager of finance (see paras 24–25).

(5) The history of the case showed that the appellant worked with the company as finance manager before he resigned. He then accepted the offer of returning to the company as finance manager and subsequently was promoted to senior general finance manager. The nature of the work was related to the company's finance department. Thus, a fixed-term contract in these circumstances led to the conclusion that the contract was not a genuine fixed-term contract. The nature of work was not a project-based or seasonal type of work but the type that a permanent employee would do (see para 26).

(6) The Industrial Court's decision was plainly wrong on the facts and law. There was insufficient appreciation of the facts and relevant law, in particular, the principle in *Ahmad Zahri bin Mirza*. Relevant factors were

not considered and irrelevant factors were considered. The contract of employment in this case was not a genuine fixed-term contract but employment on a permanent basis dressed up as several fixed-term contracts. In the circumstances, the appellant's termination amounted to a dismissal without just cause or excuse (see paras 27–28).

[Bahasa Malaysia summary

Pada bulan November 2003, perayu mula bekerja sebagai pengurus kewangan dengan pemegang saham terbesar responden sebelum dipindahkan kepada syarikat responden dengan jawatan yang sama. Lima tahun selepas berpindah, perayu telah meletak jawatan. Dua tahun kemudian, beliau menerima tawaran responden untuk bekerja secara kontrak tahunan sebagai pengurus kewangan besar. Kontrak itu dilanjutkan setiap tahun selama tujuh tahun dari 2014 hingga 2020. Pada Januari 2021, responden memaklumkan kepada perayu bahawa perkhidmatannya akan dilanjutkan hanya untuk satu bulan lagi dan selepas itu ditamatkan. Perayu menganggap penamatannya sebagai pemecatan tanpa sebab atau tanpa alasan yang munasabah dan memfailkan aduan kepada Jabatan Perhubungan Perusahaan yang merujuk perkara itu ke Mahkamah Perusahaan untuk penghakiman. Responden menyatakan bahawa beliau mempunyai kontrak dengan tempoh tetap, manakala perayu menghujahkan bahawa beliau sebenarnya adalah pekerja responden secara tetap kerana kontraknya diperbaharui setiap tahun tanpa sebarang permintaan di pihaknya dan dia diberi kenaikan pangkat, kenaikan gaji dan peningkatan cuti tahunan selama tujuh tahun tersebut. Mahkamah Perusahaan memutuskan bahawa kontrak perayu dengan responden adalah berdasarkan kontrak dengan tempoh tetap dan menolak tuntutannya. Perayu merayu terhadap award yang diberikan.

Diputuskan, membenarkan rayuan, mengenepikan award Mahkamah Perusahaan dan mengembalikan kes kepada Mahkamah Perusahaan untuk penilaian pampasan:

(1) Mahkamah Perusahaan telah menafsirkan secara literal kepada kontrak antara pihak-pihak dan mendapati bahawa perayu telah secara sukarela menerima syarat-syarat yang dimaksudkan di dalamnya terutamanya klausa 'selepas penamatan, sekiranya perkhidmatan anda diperbaharui atau dilanjutkan lagi dalam beberapa keadaan, atas permintaan anda sendiri, anda tidak dianggap sebagai pekerja tetap kami melainkan dinyatakan dengan jelas dalam surat pelantikan kami'. Mahkamah Perusahaan mendapati bahawa kontrak yang telah tamat tempoh tidak lagi memberi kesan dan bahawa tiada sambungan pekerjaan apabila perayu memasuki kontrak baru (lihat perenggan 18).

(2) Mahkamah Perusahaan gagal mengaplikasikan undang-undang untuk menentukan sama ada kontrak itu adalah kontrak untuk tempoh tetap seperti yang diputuskan dalam Mahkamah Persekutuan dalam kes

Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd [2020] 5 MLJ 58. Telah diputuskan dalam kes itu bahawa tiga perkara harus dipertimbangkan: (a) niat pihak-pihak; (b) tindakan majikan seterusnya semasa tempoh pekerjaan; dan (c) sifat perniagaan majikan dan sifat kerja yang dilakukan oleh pekerja (lihat perenggan 21–22).

(3) Fakta menunjukkan bahawa perayu telah bekerja sebagai pengurus besar kewangan dan kemudian dinaikkan pangkat kepada pengurus pesar kanan kewangan. Terdapat sifat jawatan yang kekal di bahagian kewangan syarikat responden. Niat syarikat itu jelas untuk memperbaharui kontrak pekerjaan tanpa membuatkan perayu sebagai pekerja tetap. Keadaan sedemikian berlanjutan selama tujuh tahun. Tindakan responden ini menunjukkan bahawa kontrak untuk tempoh tetap tidak dibuat untuk keperluan yang tulen tetapi sebagai cara untuk mengawal dan mengekang perayu (lihat perenggan 23).

(4) Tindakan seterusnya, menurut kes *Ahmad Zahri bin Mirza*, termasuk jumlah durasi atau tempoh perkhidmatan dengan responden. Di sini, tempohnya berlanjutan selama tujuh tahun dan perayu melakukan kerja yang sama sebagai pengurus besar kewangan dan kemudian sebagai pengurus besar kanan kewangan. Dalam tempoh ini, perayu dilayan seperti pekerja tetap, menerima kenaikan gaji dan peningkatan cuti tahunan dan kenaikan pangkat. Perayu tidak perlu memohon setiap pembaharuan tetapi pada setiap keadaan dia 'bersetuju untuk menerima pelantikan' sebagai pengurus besar kanan kewangan (lihat perenggan 24–25).

(5) Sejarah kes menunjukkan bahawa perayu bekerja dengan syarikat itu sebagai pengurus kewangan sebelum meletak jawatan. Beliau kemudiannya menerima tawaran untuk kembali ke syarikat sebagai pengurus kewangan dan seterusnya dinaikkan pangkat sebagai pengurus besar kanan kewangan. Sifat kerja itu berkaitan dengan bahagian kewangan syarikat. Oleh itu, kontrak untuk tempoh tetap dalam keadaan ini membawa kepada kesimpulan bahawa kontrak itu bukan kontrak untuk tempoh tetap yang tulen. Sifat pekerjaan tersebut bukanlah jenis pekerjaan berasaskan projek atau bermusim tetapi sifat yang akan dilakukan oleh pekerja tetap (lihat perenggan 26).

(6) Keputusan Mahkamah Perusahaan jelas salah berdasarkan fakta dan undang-undang. Tiada penilaian yang mencukupi terhadap fakta dan undang-undang yang berkaitan, khususnya, prinsip dalam kes *Ahmad Zahri bin Mirza*. Faktor-faktor yang relevan tidak dipertimbangkan dan faktor-faktor yang tidak relevan dipertimbangkan. Kontrak pekerjaan dalam kes ini bukanlah kontrak untuk tempoh tetap yang tulen tetapi pekerjaan secara tetap yang berselindung dalam beberapa kontrak untuk tempoh tetap. Dalam keadaan itu, penamatan pekerjaan perayu adalah

A sama dengan pemecatan tanpa sebab atau tanpa alasan yang munasabah (lihat perenggan 27–28).]

Cases referred to

B *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [2020] 5 MLJ 58; [2020] 3 MLRA 475, FC (refd)
Colgate Palmolive (M) Sdn Bhd v Yap Kok Foong and another appeal [2001] 4 MLJ 97; [1998] 3 ILR 843, CA (refd)
Firex Sdn Bhd v Cik Ng Shoo Waa [1990] 1 ILR 226, IC (refd)
C *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309, FC (refd)
Goon Kwee Phoy v J & P Coats (M) Bhd [1981] 2 MLJ 129, FC (refd)
Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors [1996] 3 MLJ 489; [1996] 4 CLJ 747, CA (refd)
D *M Vasagam Muthusamy v Kesatuan Pekerja-Pekerja Resorts World, Pahang & Anor* [2003] 5 MLJ 262; [2023] 5 CLJ 448; [2005] 5 AMR 552, HC (refd)
Ong Leong Chiou & Anor v Keller (M) Sdn Bhd & Ors [2021] 3 MLJ 622; [2021] 4 CLJ 821, FC (refd)
E *Robert Henry Hawkins v Rusch Sdn Bhd & Anor* [2010] 2 ILJ 66, IC (refd)
Wong Chee Hong v Cathay Organisation (M) Sdn Bhd [1988] 1 MLJ 92; [1988] 1 CLJ Rep 298, SC (refd)

Legislation referred to

F Industrial Relations Act 1967 ss 20, 30(5)

Appeal from: Case No 2/4–2575 of 2021 (Industrial Court, Kuala Lumpur)

Nur Fatin Nabilah Sallehudin (with Ummi Huda bt Hasni) (A Azidin & Shahrul) for the appellant.
G *Muhammad Syafiq Amani bin Md Sabri (Mahadi Redzuan & Co) for the respondent.*

Amarjeet Singh J:

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INTRODUCTION

[1] On 22 January 2024, I allowed the appeal by the appellant, Azrell bin Mohamad, by setting aside the award of the Industrial Court which had I dismissed his claim of constructive dismissal by his then employer, National Aerospace & Defence Industries Sdn Bhd. The claim in the Industrial Court was made pursuant to s 20 of the Industrial Relations Act 1967.

[2] This judgment contains the reasons for my decision. In this judgment,

the appellant will be referred to as 'the claimant' and his employer as 'the company'.

BACKGROUND FACTS

[3] The claimant commenced employment on 19 November 2003 as finance manager with PJS Industries Sdn Bhd, which was the company's largest shareholder. In accordance with the clause on transfer and transferability contained in the employment contract, the claimant was transferred to the company effective 1 September 2006. In a letter dated 23 February 2011, the claimant resigned from the company and his resignation was accepted on 17 March 2011.

[4] Interestingly, the claimant was offered, vide letter dated 10 June 2013 the post of general finance manager on a contractual basis for the period 17 June 2013 to 31 December 2013. The offer was accepted by the claimant. Thereafter, his contract period was extended for the following periods:

(a) appointment letter dated 27 November 2013 for the period 1 January 2014 to 31 December 2014;

(b) appointment letter dated 16 December 2014 for the period 1 January 2015 to 31 December 2015;

(c) appointment letter dated 21 December 2015 for the period 1 January 2016 to 31 December 2016;

(d) appointment letter dated 16 December 2016 for the period 1 January 2017 to 31 December 2017;

(e) appointment letter dated 20 December 2017 for the period 1 January 2018 to 31 December 2018;

(f) appointment letter dated 9 January 2019 for the period 1 January 2019 to 31 December 2019; and

(g) appointment letter dated 15 January 2020 for the period 1 February 2020 to 31 December 2020.

[5] In a letter dated 18 January 2021, the company informed the claimant that his services would only be extended only for one month, that is, from 2 January 2021 to 31 January 2021, and thereafter terminated. The claimant treated his termination by the company as a dismissal without just cause and excuse while the company's position was that the claimant was under a fixed-term contract whose services vide the contract had expired on 31 December 2021.

[6] It was the claimant's case that the company's actions of consistently

renewing the claimant's contract every year is evidence that the claimant is in permanent employment with the company. The claimant made representations to the industrial relations department under s 20 of the Industrial Relations Act 1967 that he was dismissed without just cause and excuse. The matter was referred by way of reference to the Industrial Court for adjudication. The Industrial Court adjudicated the matter and ultimately dismissed the claim.

THE AWARD OF THE INDUSTRIAL COURT

[7] The learned chairman of the Industrial Court ('the learned chairman'), applied the established law on the function of the Industrial Court which was to determine whether the claimant was dismissed and secondly that his dismissal was with just cause and excuse. In this regard, it is recognised that any act which has the effect of bringing the employment contract to an end and the means resorted to by an employer is of little significance. This is because the law recognises that any contractual termination, constructive dismissal, non-renewal of contract, forced resignation, or retrenchment are all species of the same genre, which is, 'dismissal' (see *Goon Kwee Phoy v J & P Coats (M) Bhd* [1981] 2 MLJ 129; *Wong Chee Hong v Cathay Organisation (M) Sdn Bhd* [1988] 1 MLJ 92; [1988] 1 CLJ Rep 298; and *Colgate Palmolive (M) Sdn Bhd v Yap Kok Foong and another appeal* [2001] 4 MLJ 97; [1998] 3 ILR 843).

[8] The learned chairman said that he was guided by s 30(5) of the Industrial Relations Act 1967 which in its sweep required him to decide cases according to equity and 'good conscience' by considering the substantial merits of the case rather than on technical matters (*Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors* [1996] 3 MLJ 489; [1996] 4 CLJ 747).

[9] The main issue before the learned chairman was whether the contract between the claimant and the company was a genuine fixed-term contract or otherwise a contract of employment. If it was the latter, then the question arises whether there was a dismissal and if there was, whether the dismissal was with just cause or excuse. In this regard, the learned chairman applied the law as stated in *M Vasagam Muthusamy v Kesatuan Pekerja-Pekerja Resorts World, Pahang & Anor* [2003] 5 MLJ 262; [2023] 5 CLJ 448; [2005] 5 AMR 552. In this case, the test was stated as follows:

> ... the Industrial Court had correctly addressed the issue in this case by determining first whether or not the contract in question was as genuine fixed term contract. *If the Industrial Court made a finding that it was not a genuine fixed-term contract but was really a contract of employment, then only would the Industrial Court be required to ask whether there was a dismissal or not and that if so whether it was with just cause or excuse.* In the instant case, since a finding was reached that the contract concerned was indeed a genuine fixed-term contract, the question of there being a dismissal or

not does not arise. Once it is established that there is a genuine fixed-term contract, the dissolution of the contract upon reaching the expiry date of the fixed term would clearly spell the end of the worker's tenure with the relevant company. (Emphasis added.)

[10] In arriving at his decision, that the contract was a genuine fixed-term contract the learned chairman found the following: (a) a comparison between the two types of contract, the one entered into with PJS Industries Sdn Bhd in 2003 and the fixed terms contracts entered into beginning in 2013 and each year thereafter was proof that the earlier contract was a contract of employment with tenure while the latter was for a fixed term ie a time limit for the service sought; and (b) the claimant had understood and accepted the new fixed term contract when the previous contract had expired by voluntarily executing the same which had the following 'period of contract' clause:

Upon termination, should your service be further renewed or extended on several occasions, at your own request, you are not deemed to be our permanent staff unless it is expressly stated in our letter of appointment.

[11] The learned chairman found the above provision crucial, in that, according to him by virtue of the above provision the company had the mandate to continue the contract based on need and there is no provision in the appointment letter stating that the claimant is a permanent employee. The reasoning of the learned chairman was that notwithstanding the fixed term contract was entered into year after year for a period of seven years but as long as the provision contained in the offer letter states that it is a fixed term contract, the employment cannot be treated as a permanent employment. For this proposition reference was made to *Robert Henry Hawkins v Rusch Sdn Bhd & Anor* [2010] 2 ILJ 66, an Industrial Court, where it was held as follows:

Hence, just because the contract was renewed without any break cannot by itself convert a fixed-term contract into a permanent one. The claimant has to show something more, ...

[12] The claimant had raised questions about the extension of his contract which was done several times as justification that he is actually a permanent employee. The learned chairman disagreed with the position taken by the claimant which he found was against the company's intention and policy based on the execution of a new fixed-term contract after the expiry of the earlier fixed-term contract. In this regard, the learned chairman cited *Firex Sdn Bhd v Cik Ng Shoo Waa* [1990] 1 ILR 226 where it was said:

It is well established that it is for management to decide the strength of its staff which it considers necessary in its undertaking. The court will not intervene unless it is shown that the decision was capricious or without reason or was mala fide or was actuated by victimisation or unfair labour practice.

[13] The learned chairman said that in the instant case, there was no issue of termination or dismissal as the contract was a fixed-term contract that came to an end on 31 December 2020. Accordingly, the learned chairman held that there was no dismissal and dismissed the claimant's claim.

GROUNDS OF APPEAL

[14] The grounds of appeal are found in the memorandum of appeal which can be summarised as follows due to the over-lapping of the grounds:

(a) the learned chairman erred in law and fact in holding that the contract between the claimant and the company was a genuine fixed-term contract when it was not a fixed-term contract;

(b) the learned chairman erred in fact and in law by failing to consider the company's actions of renewing the claimant's contract year after year, giving the claimant salary increments, and increasing the annual leave is proof that the claimant is a permanent employee; and

(c) the learned chairman erred in fact and law in failing to consider the fact that the company had promised that the claimant's employment would be made permanent; and

ANALYSIS AND DECISION

[15] The function of the court sitting on appeal is trite. The duty of the court is to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or established evidence or is plainly wrong in arriving at its decision (see *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309; *Ong Leong Chiou & Anor v Keller (M) Sdn Bhd & Ors* [2021] 3 MLJ 622; [2021] 4 CLJ 821).

[16] At the heart of this appeal is the issue of whether the claimant is employed under a genuine fixed-term contract or is a permanent employee of the company. The claimant's case before the Industrial Court was that his contract of employment with the company was permanent in nature and not a genuine fixed-term contract.

[17] Generally, and I use the word advisedly due to subsequent development of the law, that a fixed-term contract of employment is one where the contractual relationship between an employee and an employer lasts for a specified or definite period. A fixed-term contract lapses upon the expiry of the term stipulated in the contract unless otherwise extended. The contract terminates upon its expiry and need not be terminated by either party. The contract can still be for a fixed term if it contains within it a clause enabling

either side to terminate the contract on giving notice before the term expires.

[18] The Industrial Court as shown gave a literal construction of the contract which had a fixed term period clause and found that the claimant in the 'acknowledgment' to accept or otherwise the contract had clearly said that he had read and understood the conditions of the contract offered to him. The learned chairman found that the claimant had voluntarily accepted the terms knowing what the clause meant ie that 'upon termination, should your service be further renewed or extended on several occasions, at your own request, you are not deemed to be our permanent staff unless it is expressly stated in our letter of appointment'. Thus, it did not matter even if the claimant year after year was offered a contract for a fixed term as it was according to the learned chairman against the company's policy. The contract that had expired ceased to have any effect. Thus, there was no continuity of employment when the claimant entered into the new contract.

[19] The claimant contended that the law on whether a contract is a genuine fixed-term contract has been propounded by the Federal Court in *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [2020] 5 MLJ 58; [2020] 3 MLRA 475. It was recognised that using a fixed-term contract employee had become a trend, particularly where employees are engaged on a project basis where the contract of employment is for a specific period of time ie with a defined end.

[20] The main issue that presents itself in fixed-term contracts according to the Federal Court is whether there is a genuine fixed-term contract or there is employment on a permanent basis dressed up as several fixed-term contracts. What was never done before was the enunciation of the test applicable to answering the issue.

[21] The Federal Court explained, after a review of numerous authorities, that judicial treatment regarding the question of whether an employer had a genuine need for the service of an employee for a fixed duration may be divided into three consideration points:

(a) the intention of the parties;

(b) the employer's subsequent conduct during the course of employment; and

(c) nature of the employer's business and nature of work which an employee is engaged to perform.

[22] I would now undertake the exercise as this was not done by the Industrial Court as it did not apply the law in *Ahmad Zahri Mirza.*

The intention of parties

[23] The intention of the parties would determine whether the contract was a genuine fixed-term contract or was a sham or dressed-up fixed contract that amounts to permanent employment. This can be determined by the action of the employer. The material facts show that the claimant was employed as general finance manager and then promoted to senior general finance manager. There was a permanent nature of the position in the finance department of the company. The intention of the company was clearly to renew unfailingly the contract of employment without making the same permanent. It did so for seven years. This conduct of the company showed that the fixed-term contract was not out of genuine necessity but as a means of control and subjugation of the claimant.

Company's subsequent conduct during employment

[24] The subsequent conduct according to *Ahmad Zahri Mirza* includes the total duration or length of service with the company. Here the total length of service was seven years and doing the same work as general finance manager and then as senior general manager of finance. During this period, he was treated like a permanent employee receiving salary increments and an increase in annual leave and promotion.

[25] The claimant did not have to apply for each renewal. Here the 'acknowledgment' when accepting a new contract is crucial: It states that, 'I, ... having read and understood the terms and conditions stipulated in the contract of service of the contract and *hereby agree to accept the appointment* as senior general manager finance with effect from ...'.

Nature of company's business and nature of work

[26] The next consideration is the nature of the company's business and the nature of the work that the claimant was engaged to perform. This factor would determine the true character of the contract. The history of this case shows that the claimant worked with the company as a finance manager before he resigned. The claimant was offered back to the company as general finance manager and subsequently promoted to senior general finance manager. The nature of the work was related to the company's finance department. Thus, a fixed-term contract in these circumstances leads to the conclusion that the contract was not a genuine fixed-term contract. The nature of work is not the project-based or seasonal type of work but the type that a permanent employee would do.

CONCLUSION

[27] I find that there was an insufficient appreciation of the facts and relevant law, in particular, the principle in *Ahmad Zahri Mirza.* There was a failure to consider relevant factors and irrelevant factors were considered. The decision was therefore plainly wrong on fact and law.

[28] The contract of employment was not a genuine fixed term contract but there is an employment on a permanent basis dressed up as several fixed term contracts. In the circumstances, the termination of the claimant amounted to a dismissal without just cause and excuse.

[29] In the upshot, this was a proper case for appellate interference.

[30] For the aforesaid reasons, I allow the appeal and set aside the award of the Industrial Court. The matter is remitted to the Industrial Court for a proper assessment of compensation.

Appeal allowed, Industrial Court's award set aside and case remitted back to the Industrial Court for assessment of compensation.

Reported by Ashok Kumar